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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

NO. [redacted] 84

W. L. MATTHEWS, ET. AL., Appellants

VS.

J. F. RODGERS, ET. AL., Appellees

STATEMENT AS TO JURISDICTION ON APPEAL.

GEO. T. MITCHELL,
Attorney General,

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Attorneys for Appellants.

In The Supreme Court of The United States
OCTOBER TERM

NO. 967

W. L. MATTHEWS, ET. AL., Appellants
VS.
J. F. RODGERS, ET. AL., Appellees

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above styled cause on appeal, respectfully present:

A.
STATUTORY PROVISION SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938, provides that Sections 238 and 266 of the Judicial Code are amended to read as follows:

> "Section 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise."
>
> "Section 266. No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State

in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges; Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain

in force only until the hearing and determination of the application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State Courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was entered on the 21st day of February, 1931.

The application for appeal was presented on the 28th day of February, 1931.

C.

NATURE OF CASE AND RULING BELOW.

This is an appeal from a final decree of the United States District Court Northern District of Mississippi, three judges sitting in said cause wherein the appellees filed a bill of complaint against the appellants to enjoin them from enforcing Section 56, Chapter 88, Laws of 1930, which reads as follows, to-wit:

> "Cotton Buyers.—Every person engaged in the business of buying or selling cotton for himself shall pay a privilege tax of one hundred ($100.00) dollars; but, where a cotton buyer only buys cotton from one gin in only one county or buys from the producers in only one municipality, said privilege tax is twenty-five ($25.00) dollars; the license must be issued in his name, and may be paid on or before the first day of September for a full year; only the municipality of his residence can collect a municipal privilege tax of him. Every individual, firm, partnership or corporation engaged in the business of buying or selling cotton shall take out in his or their name a state privilege tax of twenty-five ($25.00) dollars for every employee engaged in their business as buyer or seller, on or before the first day of September; such privilege tax shall authorize the buying or selling cotton by its bearer; and it shall be unlawful for any employee to buy or sell cotton without a privilege tax in his possession, issued in the name of his employer. Such license cannot be issued for less than a year."

It is alleged in said bill that appellees buy cotton in the State of Mississippi, sell it outside the State of Mississippi, and said appellees under the facts stated in the bill are engaged solely and exclusively in interstate commerce, and that said statute hereinbefore quoted levies a tax on interstate commerce. Said bill further alleges that the amount in controversy exceeds the sum of $3,000.00 exclusive of interest and cost and other material facts in reference to the jurisdiction.

The basis for the relief prayed for is the claim that the above quoted act of the legislature of the State of Mississippi is unconstitutional and void because:

First: Said act violates the provisions of Article 1, Section 8, Clause 3 of the Constitution of the United States in that it attempts to impose a license, place a burden, interfere with, obstruct and/or regulate interstate commerce.

Second: Said act is an attempted usurpation of the powers delegated to the Congress of the United States by the Constitution of the United States.

After hearing said cause the said Court, composed of Honorable Rufus E. Foster, Circuit Judge, Honorable Edwin R. Holmes and Honorable Wayne G. Borah, District Judges, held that said act as applied to appellee violated the section of the Constitution of the United States hereinbefore named, as appellee was engaged solely in interstate commerce in the State of Mississippi, and enjoined the appellants from enforcing said act.

D.

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Moore v. Fidelity & Deposit Co., 272 U. S. 317, 320-321; *Smith v. Wilson*, 273 U. S. 388; *Ex Parte Butler*, 271 U. S. 461, 465; *State Board of Tax Commissioners v. Jackson*, No. 183, October Term 1930.

We respectfully submit that this Court has jurisdiction of the appeal by virtue of Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

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Attorney General,

J. A. LAUDERDALE,
Assistant Attorney General,
Attorneys for Appellants.